

PROPOSED AMENDMENT TO CURRENT PFO SENTENCING AND DEFINITION, WITH DEFINITION TO BE APPLIED RETROACTIVELY AS PROVIDED FOR WITHIN AMENDED DEFINITION. ~ For Public Comment for LJIC Aug 29, 2022.

Montana Code Annotated 2021

TITLE 46. CRIMINAL PROCEDURE

CHAPTER 18. SENTENCE AND JUDGMENT

Part 5. Persistent Felony Offenders

Sentencing Of Persistent Felony Offender

46-18-502. Sentencing of persistent felony offender. (1) Except as provided in **46-18-219** and subsection (2) of this section, a persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 100 years or shall be fined an amount not to exceed \$50,000, or both, if the offender was 21 years of age or older at the time of the commission of the present offense.

(2) Except as provided in **46-18-219**, an offender shall be imprisoned in a state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount not to exceed \$50,000, or both, if:

(a) the offender was a persistent felony offender, as defined in **46-1-202**, at the time of the offender's previous felony conviction;

(b) less than 5 years have elapsed between the commission of the present offense and:

(i) the previous felony conviction; or

(ii) the offender's release on parole, from prison, or from other commitment imposed as a result of the previous felony conviction; and

(c) the offender was 21 years of age or older at the time of the commission of the present offense.

(d) the offender's previous prior felony conviction was not the result of a **41-5-206**, except as provided in **46-18-219**

(3) Except as provided in **46-18-222**, the imposition or execution of the first 5 years of a sentence imposed under subsection (1) of this section or the first 10 years of a sentence imposed under subsection (2) of this section may not be deferred or suspended.

(4) Any sentence imposed under subsection (2) must run consecutively to any other sentence imposed.

History: En. 95-1507 by Sec. 5, Ch. 513, L. 1973; amd. Sec. 21, Ch. 184, L. 1977; amd. Sec. 11, Ch. 584, L. 1977; R.C.M. 1947, 95-1507(2), (3); amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 327, L. 1981; amd. Sec. 16, Ch. 482, L. 1995; amd. Sec. 12, Ch. 52, L. 1999; amd. Sec. 29, Ch. 321, L. 2017.

*This amendment shall be applied retroactively.

MONTANA CODE AS DEFINED [Part 5. Persistent Felony Offenders - Table of Contents, Title 46, Chapter 18, MCA \(mt.gov\)](#)

Part 5. Persistent Felony Offenders

Definition Of Persistent Felony Offender

46-18-501. Definition of persistent felony offender. A "persistent felony offender" is an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have been previously convicted of a felony if:

(1) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed;

(2) less than 5 years have elapsed between the commission of the present offense and either:

(a) the previous felony conviction; or

(b) the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction; and

(3) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside in a postconviction hearing.

(4) none of the offender's prior felony convictions were a result of a **41-5-206**, except as provided in **46-18-219**

History: En. 95-1507 by Sec. 5, Ch. 513, L. 1973; amd. Sec. 21, Ch. 184, L. 1977; amd. Sec. 11, Ch. 584, L. 1977; R.C.M. 1947, 95-1507(1).

*This amendment shall be applied retroactively.

